

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re DEEP VEIN THROMBOSIS  
LITIGATION

MDL Docket No 04-1606 VRW

ORDER

This Document Relates To:

Halterman v Delta Airlines, Inc,  
Qantas Airways, Limited and  
Skywest, Inc, No 04-3953

Plaintiff Greg Halterman requests clarification of the court's July 10, 2007 order granting Qantas's motion for summary judgment. Doc #629. Specifically, Halterman seeks clarification of the court's denial of Halterman's FRCP 56(f) request for further discovery. Id. Halterman takes issue with language in the order suggesting that he failed to pursue discovery in a diligent manner. Halterman states that he was "never given any meaningful opportunity to conduct discovery" because "[d]iscovery was stayed completely until late 2006" and thereafter, discovery was "severely limited in scope by this Court." Id at 2-3. Halterman points to the following dialogue from the January 16, 2007 case management conference:

1 Ms Posada: Can we also have an opportunity to, I have the  
2 flight crew on board the Qantas aircraft identified for  
3 depositions, we would need to have their depositions to have  
4 them testify about what exactly happened during that flight.  
Whether or not the passengers were allowed to get up and move  
about.

5 The Court: Well, I think, it's - I don't think there's  
6 probably any difficulty in providing the identity of those  
7 flight crew members, whether we need the deposition of those  
8 individuals prior to the filing and the hearing of the summary  
judgment is more doubtful here.

9 If you can make a showing based upon what you learn from the  
10 flight history, from the testimony of Mr Halterman the  
11 plaintiff, and what other evidence he develops and the  
identity of those flight crew members, then obviously if you  
can make that showing then an extension to take further  
discovery would be appropriate.

12 But, I think, I need a little bit more to substantiate further  
discovery in the Halterman case.

13 Id at 2.

14 In his request for clarification, Halterman states:

15 Plaintiff cannot determine whether he will be appealing the  
16 court's [summary judgment] order without clarification. Most  
significantly, is it the court's order that plaintiff's FRCP  
56(f) application for further discovery is denied, thereby  
preventing plaintiff an opportunity to establish sufficient  
facts to raise a disputed issue of material fact because:

17 1) Plaintiff failed to pursue discovery for said information  
18 previously in a diligent manner, and therefore is now  
precluded from doing so?

19 OR

20 2) the application is denied solely because the evidence  
21 plaintiff seeks only pertains to the accident element of  
Article 17 liability and not the causation element of said  
22 liability and for that reason [sic] irrelevant and moot.

23 The clarification is necessary because if the court ordered  
24 denial of the application due to a lack of discovery conducted  
on plaintiff's part, said result would be patently unfair to  
25 plaintiff \* \* \* If the latter is the sole reason for the  
denial, plaintiff must forego an appeal on said ground.

26 Id at 4-5.

27 The court first notes that it is still not clear that  
28 Halterman was diligent even in pursuing the "severely limited"

1 discovery permitted by the court. See Summary Judgment Order (Doc  
2 #628) at 23 (noting that Halterman never served an interrogatory  
3 requesting that Qantas identify the flight crew of QF94).

4 Halterman's FRCP 56(f) request was denied, however,  
5 because Halterman failed to comply with FRCP 56(f). Specifically,  
6 as stated in the July 10 order, Halterman's FRCP 56(f) declaration  
7 failed to identify specific facts Halterman hoped to elicit from  
8 further discovery, failed to show that those facts exist and failed  
9 to show that those facts were essential to resist summary judgment.  
10 See Order (Doc #628) at 22.

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14 SO ORDERED.  
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19 VAUGHN R WALKER

20 United States District Chief Judge  
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